

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

MARK WAGNER; JOHN D. WAGNER; CAROLINE  
WAGNER; AND PAUL WAGNER,

Petitioners,

v.

THE ROCKEFELLER UNIVERSITY a/k/a THE  
ROCKEFELLER UNIVERSITY HOSPITAL f/k/a  
ROCKEFELLER INSTITUTE HOSPITAL f/k/a THE  
ROCKEFELLER INSTITUTE FOR MEDICAL  
RESEARCH f/k/a THE ROCKEFELLER INSTITUTE;  
THE ROCKEFELLER INSTITUTE; THE  
ROCKEFELLER FOUNDATION; DEBEVOISE &  
PLIMPTON LLP; MADISON SQUARE BOYS & GIRLS  
CLUB, INC. f/k/a MADISON SQUARE BOYS CLUB;  
JOHNS HOPKINS UNIVERSITY; INDIANA  
UNIVERSITY; KINSEY INSTITUTE; RUTH  
ARCHIBALD; LAWRENCE ARCHIBALD; EVELYN  
ARCHIBALD individually and in her capacity as Personal  
Representative; and the ESTATE OF REGINALD  
ARCHIBALD,

Respondents.

Index No.: \_\_\_\_\_

**PETITION FOR PRE-  
ACTION DISCOVERY,  
INDEPENDENT MASTER  
AND INJUNCTION**

Petitioners Mark Wagner, John D. Wagner, Caroline Wagner, and Paul Wagner (collectively "Petitioners"), by and through their undersigned attorneys, for their verified petition under Article 4 of the New York Civil Practice Law and Rules ("C.P.L.R."), file this proceeding against Respondents Rockefeller University a/k/a The Rockefeller University Hospital f/k/a The Rockefeller Institute Hospital f/k/a The Rockefeller Institute for Medical Research f/k/a The Rockefeller Institute; Rockefeller Institute; The Rockefeller Foundation (collectively "Rockefeller"); Debevoise & Plimpton LLP ("Debevoise"); Madison Square Boys & Girls Club, Inc. f/k/a Madison Square Boys Club ("MSBC"); Johns Hopkins University ("JHU"); Indiana

University; Kinsey Institute; Ruth Archibald; Lawrence Archibald; Evelyn Archibald, individually and in her capacity as Personal Representative, and the Estate of Reginald Archibald (“Estate”) (collectively “Respondents”), and allege upon their personal knowledge and, where stated, upon information and belief, as follows:

### INTRODUCTION

1. This is a special proceeding to seek injunctive relief on behalf of Petitioners Mark Wagner, John D. Wagner, Caroline Wagner, and Paul Wagner who have been harmed by the sexual abuse of Dr. Reginald Archibald (“Dr. Archibald”) and the negligence and complicity of the other Respondents. This proceeding arises out of the abuse and cover-up perpetrated between 1940 through the present by Dr. Archibald, a pediatric endocrinologist at Rockefeller University Hospital, and the other Respondents. Petitioners and countless other victims of Dr. Archibald were most recently harmed by the transmission and receipt of a highly offensive, and extreme and outrageous correspondence directed at them by Respondents Rockefeller and Debevoise for no purpose other than to benefit Rockefeller and shield its liability. Rockefeller University Hospital employed Dr. Archibald for over forty years. Throughout that forty plus year career working at Respondent Rockefeller,<sup>1</sup> Dr. Archibald molested and repeatedly sexually abused at least hundreds, if not likely thousands of children, including Petitioners under the guise of patient examinations. Dr. Archibald did so by using the prestige and name of Rockefeller University Hospital to persuade naïve working-class parents to entrust their children to his care at Respondents’ facilities.

2. During his time alone with these children, Dr. Archibald took nude and

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<sup>1</sup> Dr. Archibald began working at the Rockefeller Institute for Medical Research as a visiting investigator in 1940, and as an assistant resident physician from 1941-1946. From 1946 to 1948, Dr. Archibald worked at Respondent JHU. Dr. Archibald later returned to Respondent Rockefeller as senior physician and professor from 1948-1980, with medical staff privileges until 1982. He became professor emeritus in 1980 and senior physician emeritus in 1987.

pornographic photos of his victims and kept them at Respondent Rockefeller's facility.

3. Upon Petitioners' information and belief, for many years Respondent Rockefeller's staff members were aware of the inappropriate photographs as well as Dr. Archibald's misconduct, yet remained silent.

4. Petitioners were molested by Dr. Archibald.

5. Dr. Archibald took nude photographs of Petitioners.

6. Respondent Rockefeller, along with Respondent Debevoise, investigated Dr. Archibald and found credible allegations of sexual abuse by Dr. Archibald at the very latest in 2004, with earlier allegations dating back to the mid 1990's, when Dr. Archibald was still living.<sup>2</sup>

7. Upon information and belief, Respondent Rockefeller only revoked Dr. Archibald's "professor emeritus" and "senior physician emeritus" statuses in October 2018.

8. Despite Respondents' earlier knowledge that Dr. Archibald had abused and photographed naked children in their care, it was not until Fall 2018 that Respondents notified the victims. This timing is no coincidence and necessitates immediate neutral oversight. Respondents contacted Archibald survivors, knowing that passage of New York's groundbreaking new child victim abuse law (Child Victims Act, S2440), was likely and would re-open the window of the statute of limitations. Respondent Rockefeller re-engaged Respondent Debevoise and reached out to the unsuspecting and unrepresented (now much older) survivors of Dr. Archibald.

9. The Child's Victims Act was enacted on February 14, 2019 and resuscitated time barred child sexual abuse claims. Such claims will become actionable in August 2019 but not before then. During this six-month waiting period, there is a disparity in knowledge and sophistication between these survivors and the Respondents. This six-month period must not be another opportunity for abuse when this law has such worthy goals of permitting survivors to

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<sup>2</sup> Dr. Archibald died in 2007.

make their claims.

10. During the Fall of 2018, Respondent Rockefeller mailed correspondence<sup>3</sup> to at least 1,000 former patients of Dr. Archibald, including Petitioners.

11. Petitioners received copies of versions of the letter from Respondent Rockefeller dated September 26, 2018 (“September Rockefeller Letter”).<sup>4</sup>

12. The September Rockefeller Letter to Petitioners indicated that Respondent Rockefeller believed the recipients were patients of Dr. Archibald, who was accused of inappropriate conduct with other former patients. The letter included contact information for a lawyer and law firm (Respondent Debevoise)—representing Rockefeller University Hospital—that the recipient could call. Petitioners’ September Rockefeller Letter did not identify Respondent Debevoise as counsel for Rockefeller as such, nor did the Letter inform Petitioners what uses their information would be put to. Glaringly, the letter did not advise of the imminent change in the law or why Respondents were now reaching out to Petitioners after knowing of the abuse for a very long time.

13. The September Rockefeller Letter re-opened wounds and re-traumatized Petitioners, causing severe emotional distress and constituted an attempt at discovery prior to the expiration of the six-month period. Petitioners were unaware of the imminent change in the law.

14. The September Rockefeller Letter did not advise Petitioners that they should retain legal counsel before they contacted and volunteered information to Respondent Debevoise as part of their investigation into Dr. Archibald. Respondent Debevoise did not represent Petitioners’ and victims’ interests, but rather Respondent Rockefeller’s.

15. Upon information and belief, none of the victims who received correspondence

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<sup>3</sup> “Generic Rockefeller Letter,” attached as Exhibit 1.

<sup>4</sup> The September Rockefeller Letter is attached as Exhibit 2.

from Debevoise were advised in that correspondence to consult with legal counsel before participating in Debevoise's investigation of Archibald.

16. A second letter from Respondent Rockefeller dated November 9, 2018,<sup>5</sup> indicated that Respondent Debevoise was acting as the "external legal counsel [of Respondent Rockefeller] retained to conduct a full investigation." The letter went on to say that "We plan to share with you the investigation's conclusions, while protecting patient privacy, when the investigation is complete." No information has been shared by Debevoise.

17. In a review of the extensive Rockefeller University Hospital archives database, no mention of Dr. Archibald is currently available; no archived publications of Dr. Archibald are referenced and it indicates that the photographs are not searchable. Respondents' conduct in their self-serving investigation and the potential that photographs are missing and or the archives have been altered give rise to spoliation concerns and warrant appointment of a special master; notice to survivors and families of other former victims now deceased is also necessary. Preservation of all evidence and the factual record related to the investigation; its findings and any chronology related to the destruction of records is necessary.

### **JURISDICTION AND VENUE**

18. Jurisdiction of this Court is found upon C.P.L.R. § 302 in that Respondents transact business within the State and committed the acts described here within this State.

19. Venue lies in this Court pursuant to C.P.L.R. §§ 503(a), (c) and (d) and other laws in that one or more Respondents are authorized to transact business in this State and have their principal office located in the State and County of New York; C.P.L.R. 506 in that this is a special proceeding; and C.P.L.R. §509 in that Petitioners has designated New York County for the trial.

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<sup>5</sup> November 9, 2018 Letter ("November Rockefeller Letter"), attached as Exhibit 3.

**PARTIES**

20. Petitioner Mark Wagner is a resident of Dudley, Massachusetts. He became a patient of Dr. Archibald's in 1968, at or around the time he was nine years old and remained Dr. Archibald's patient for a period of approximately four years. When Mark Wagner was eight years old, he was diagnosed with *Alopecia*, a condition characterized by hair loss that can become total. In response, Mark Wagner's mother brought him to Dr. Archibald at Rockefeller University Hospital.

21. Petitioner John D. Wagner is a resident of Berkeley, California. He was a patient of Dr. Archibald's in 1970, for a brief period of time at or around the time he was approximately eleven years old.

22. Petitioner Caroline Wagner is a resident of Dublin, Ohio. She was examined once by Dr. Archibald in 1969, at or around the time in which she was fourteen years old.

23. Petitioner Paul Wagner is a resident of Kensington, Maryland. He was examined by Dr. Archibald in 1971, when he was approximately thirteen or fourteen years old.

24. Mark Wagner, John D. Wagner, Caroline Wagner, and Paul Wagner are all siblings who lived together as children.

25. Respondent Rockefeller University a/k/a Rockefeller University Hospital f/ka Rockefeller Institute Hospital f/k/a Rockefeller Institute for Medical Research f/k/a Rockefeller Institute is located at 1230 York Ave., New York, New York 10065. Respondent Rockefeller University is a domestic not-for-profit corporation formed under and governed by the laws of the State of New York. The "Rockefeller University Hospital" is a division of Respondent Rockefeller University and operates under its charter.

26. Respondent Rockefeller Institute is located at 1230 York Ave., New York, New York. Respondent Rockefeller Institute is a domestic not-for-profit corporation formed under and

governed by the laws of the State of New York.

27. Respondent Rockefeller Foundation is located at 420 Fifth Ave., New York, New York. Respondent Rockefeller Foundation is a domestic not-for-profit corporation formed under and governed by the laws of the State of New York.

28. Respondents Rockefeller University a/k/a Rockefeller University Hospital f/ka Rockefeller Institute Hospital f/ka Rockefeller Institute for Medical Research f/k/a Rockefeller Institute; Rockefeller Institute; and the Rockefeller Foundation are collectively referred to as “Rockefeller.”

29. What is now known as the “Rockefeller University Hospital” was founded in 1910, and it was originally called the “Rockefeller Institute Hospital.” It was a part of the “Rockefeller Institute for Medical Research,” which was founded in 1901. From 1958 to 1965, the institution was known as the “Rockefeller Institute,” and it has been known by its present name, the “Rockefeller University Hospital,” since 1965.

30. Rockefeller University Hospital is a leading national medical research institute funded by federal grant money, philanthropic donations from prominent donors, royalties from patents, and by borrowing money on the public market through the issuance of bonds.

31. Rockefeller University Hospital’s prestige and prominence as a leading clinical research hospital was used to influence young and struggling families to get their sons treatment for “free” at one of the country’s premier research hospitals.

32. Upon Petitioners’ information and belief, Respondent Rockefeller is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda

associated therewith; employee interviews and summaries; as well as other relevant documents and data related to Dr. Archibald's employment at Respondent Rockefeller.

33. Respondent Debevoise & Plimpton LLP is a law firm with its primary offices located at 919 Third Avenue, New York, New York. Respondent Debevoise is a registered limited liability partnership formed under and governed by the laws of the State of New York.

34. The founder of Respondent Debevoise was the prominent New York lawyer Eli Whitney Debevoise who once served as a trustee of Rockefeller University.

35. Upon information and belief, Respondent Debevoise is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries; as well as other relevant documents and data related to its investigation, on behalf of its client Respondent Rockefeller.

36. Respondent Madison Square Boys & Girls Club, Inc. is located at 733 Third Avenue, Floor 2, New York, New York. Respondent MSBC is a domestic not-for-profit corporation formed under and governed by the laws of the State of New York.

37. According to MSBC's website, "The mission of Madison Square Boys & Girls Club is to save and enhance the lives of New York City boys and girls who by reason of economic or social factors are most in need of its services."

38. At all relevant times Respondent MSBC made patient referrals to Respondent Rockefeller and Archibald.

39. Dr. Archibald was a fixture at Respondent MSBC for decades, with his own private office on the premises where he was present most weekends. Dr. Archibald recruited his victims



for his “studies” and “research” from Respondent MSBC where he acted as the “pool doctor” and served as a trustee.

40. Upon Petitioners’ information and belief, Respondent MSBC is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries; as well as other relevant documents and data related to Respondent MSBC relationship as a referral agent to Dr. Archibald and Respondent Rockefeller.

41. Respondent Johns Hopkins University is a private not for profit corporation organized under the laws of the State of Maryland and has its principal place of business in Baltimore City, Maryland.

42. Dr. Archibald spent two years of his career away from Respondent Rockefeller when, in 1946, he took a job at Respondent JHU.

43. Upon Petitioners’ information and belief, Respondent JHU is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries; as well as other relevant documents and data related to Dr. Archibald’s employment at Respondent JHU.

44. Respondent Indiana University is a multi-campus public university system in the State of Indiana.

45. Respondent Indiana University is home to the Kinsey Institute.

46. Respondent Kinsey Institute is a domestic nonprofit corporation incorporated in the state of Indiana.

47. The Kinsey Institute was founded by Dr. Alfred Kinsey who was a sex researcher funded by the Rockefeller Foundation.

48. Upon information and belief Dr. Archibald and Dr. Kinsey were funded by the Rockefeller Foundation at the same time and both carried out similar research involving young vulnerable children and photographed them in the nude.

49. Upon information and belief Respondent Kinsey Institute has a large library of sex based research and child pornography.

50. Upon information and belief, Kinsey Institute and/or Indiana University is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries, as well as other relevant documents and data related to Dr. Archibald and his clinical practice as a physician and professor at Respondents Rockefeller and JHU.

51. Upon information and belief, the Rockefeller Foundation funded research at Rockefeller University Hospital including research from Dr. Archibald and therefore supported and participated in the illegal conduct of Dr. Archibald.

52. Respondent Ruth Archibald resides in Rochester, Minnesota. Respondent Ruth Archibald is the daughter of Dr. Archibald.

53. Upon Petitioners' information and belief, Respondent Ruth Archibald is still in

custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries, as well as other relevant documents and data related to her deceased father—Dr. Archibald and his clinical practice as a physician and professor at Respondents Rockefeller and JHU.

54. Respondent Lawrence Archibald resides in Houston, Texas. Respondent Lawrence Archibald is the son of Dr. Archibald.

55. Upon Petitioner's information and belief, Respondent Lawrence Archibald is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries; as well as other relevant documents and data related to his deceased father—Dr. Archibald and his clinical practice as a physician and professor at Respondents Rockefeller and JHU.

56. Respondent Evelyn Archibald resides in Katy, Texas. Respondent Evelyn Archibald was the wife of Dr. Archibald and was appointed to serve as Personal Representative of Dr. Archibald's estate.

57. Upon Petitioners' information and belief, Respondent Evelyn Archibald is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public

or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries; as well as other relevant documents and data related to both her deceased husband and his estate—Dr. Archibald and his clinical practice as a physician and professor at Respondents Rockefeller and JHU.

58. Respondent Estate of Reginald Archibald (the “Estate”) refers to the estate of decedent Dr. Archibald, who died on May 10, 2007, and was residing in Olmsted County, Minnesota at the time of his death. *See In re the Estate of Reginald M Archibald, Deceased*, Case No. 55-PR-07-12354 (Olmsted County District Court).

59. The Estate’s Letters Testamentary were granted on January 31, 2008. Respondent Evelyn Archibald, the decedent’s wife, was named as Personal Representative of the Estate.

60. The Estate is responsible for all liabilities associated with Dr. Archibald at the time of his death.

61. Upon Petitioners’ information and belief, the Estate is still in custody, possession, or control, in both physical and electronic formats, of relevant patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith; employee interviews and summaries, as well as other relevant documents and data related to the decedent—Dr. Archibald and his clinical practice as a physician and professor at Respondents Rockefeller and JHU.

### **FACTUAL ALLEGATIONS**

#### **A. Misconduct Pertaining to Dr. Archibald**

62. Dr. Archibald began working at the “Rockefeller Institute for Medical Research” (later, the “Rockefeller University Hospital”) as a visiting investigator in 1940, and at the

Hospital as an assistant resident physician from 1941-1946. From 1946 to 1948, Dr. Archibald worked at Respondent Johns Hopkins University. Dr. Archibald later returned to Respondent Rockefeller as a senior physician and University professor from 1948-1980, with medical staff privileges at the Hospital until 1982. Respondent Rockefeller granted Dr. Archibald the honorary title of professor emeritus in 1980 and senior physician emeritus in 1987.

63. At all material times, Dr. Archibald worked for, was employed by, and acted as an agent, employee, and servant of Respondent Rockefeller under its direct supervision, management, agency, and control.

64. Dr. Archibald's clinical research centered around childhood growth and maturation, focusing on children of short stature. Dr. Archibald was a preeminent pediatric endocrinologist and was widely considered one of the best specialists in the northeast. Dr. Archibald contributed to, authored, and published numerous scholarly articles in academic publications.

65. Throughout his tenure at Respondent Rockefeller, Dr. Archibald treated approximately 9,000 patients during his career.

66. However not all children who were seen by Dr. Archibald suffered from the aforementioned conditions. Many children were referred to Dr. Archibald by Respondent MSBC or were children who had older siblings who were also being "treated" by Dr. Archibald under the guise of "free treatment."

67. Respondent Rockefeller represented to Petitioners and their parents, patients, and the community at-large that Dr. Archibald was safe, trustworthy, and of high moral and ethical repute. Respondent Rockefeller implicitly represented that Dr. Archibald was not a sexual threat to his patients.

68. Petitioners had no reason to suspect that Dr. Archibald was anything other than a competent and ethical physician under the employ of Respondent Rockefeller.

69. This cohort of thousands of patients, including Petitioners, was incredibly vulnerable. They were too young to know the difference between a legitimate medical practice and molestation.

70. During his examinations Dr. Archibald would require his victims to remove all of their clothing in order to conduct a “physical exam.”

71. Dr. Archibald took nude and sexually explicit photographs of his victims, including Petitioners.

72. Dr. Archibald measured his victims’ genitals, both flaccid and erect.

73. Dr. Archibald photographed his female victims in sexually explicit positions.

74. Dr. Archibald required Petitioners John D. Wagner, Mark Wagner, Caroline Wagner, and Paul Wagner to disrobe so that they could be photographed while fully nude.

75. Dr. Archibald’s abuse took place in his office and the examination rooms at Respondent Rockefeller’s facilities.

76. Dr. Archibald used Respondent Rockefeller’s equipment while abusing his victims.

77. Upon Petitioners’ information and belief, other Respondent Rockefeller staff members were aware of Dr. Archibald’s sexual abuse at the time he was abusing children.

78. Upon information and belief, Respondent Rockefeller was aware of the nude and pornographic photographs Dr. Archibald was taking of his victims while his victims were still patients of the hospital.

79. Dr. Archibald carried out all of these acts under the guise of “providing free medical” care at Respondent Rockefeller. Dr. Archibald carried out these acts without fully explaining the “treatment” or obtaining informed consent from his patients.

80. Respondent Rockefeller had the authority, duty and the ability to prevent Dr. Archibald from sexually abusing pediatric patients, and from taking nude and pornographic

photographs of pediatric patients, throughout Dr. Archibald's career at Respondent Rockefeller.

81. Respondent Rockefeller failed to do so, and affirmatively ignored Dr. Archibald's abusive behavior, allowing the abuse to occur and to continue unabated.

82. Upon Petitioners' information and belief, Respondent Rockefeller never suspended, warned, terminated, or otherwise disciplined Dr. Archibald for this heinous conduct.

83. Had Respondent Rockefeller reasonably supervised Dr. Archibald and investigated him regarding his abusive conduct and the nude photos he took, it would have prevented further abuse.

84. Upon information and belief, Respondents Rockefeller and Debevoise have conspired to conceal Dr. Archibald's wrongful acts, avoid and inhibit detection, block public disclosure, avoid scandal and negative publicity, avoid the disclosure of Respondent Rockefeller's tolerance of child sexual molestation and abuse, preserve a false sense of propriety, and avoid investigation and action by public authority including law enforcement and ultimately prevent victims from seeking appropriate legal relief against the Respondents for injuries that were proximately caused by the heinous sexual assaults and related misconduct of Dr. Archibald.

85. On October 18, 2018, the *New York Times* published a bombshell report titled "An Esteemed Doctor, Child Sexual Abuse Claims and a Hospital That Knew for Years"<sup>6</sup> detailing the multitude of abuses committed by Dr. Archibald, as well as Respondent Rockefeller's knowledge of such complaints dating back to the mid 1990's. Other news reports detailing Dr. Archibald's abuse have since followed.

**B. Respondent Rockefeller's Knowledge of Dr. Archibald's Misconduct and Subsequent Investigation**

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<sup>6</sup> See <https://www.nytimes.com/2018/10/18/nyregion/dr-reginald-archibald-rockefeller-abuse.html>.

86. On October 5, 2018, Rockefeller released a statement (the “October 5<sup>th</sup> statement”)<sup>7</sup> indicating that “we have come to learn that Dr. Reginald Archibald [...] engaged in certain inappropriate conduct during patient examinations.”

87. As part of its October 5<sup>th</sup> Statement, Respondent Rockefeller stated that “[i]n 2004, [it] was informed of a report by a former patient related to the propriety of certain of Dr. Archibald’s conduct during physical examinations.”<sup>8</sup>

88. Respondent Rockefeller also stated that it had notified the federal Office of Human Research Protections, the New York State Office of Professional Medical Conduct, and the Manhattan District Attorney. In addition, in 2004 the University also retained legal counsel, Respondent Debevoise, to investigate the allegations.

89. However, in 2004 (while Dr. Archibald was still alive) Respondent Rockefeller did not make any attempt to notify potential victims so that they could offer additional, corroborating information to the Manhattan District Attorney and testify against Dr. Archibald as part of a criminal prosecution. Additionally, upon information and belief, Respondent Rockefeller did not notify the U.S. Attorney’s Office for the Southern District of New York. If it had notified the U.S. Attorney’s Office, and the U.S. Attorney’s Office had prosecuted (a then living) Dr. Archibald for abuse and child pornography, Dr. Archibald’s victims could have sought restitution as a part of the prosecution. *See* 18 U.S.C. § 2259.

90. Following its review of then-available information in 2004, including from interviews with former patients, faculty, administrators, and staff, and the two prior reports made in the 1990s that were located, Respondent Debevoise found certain allegations “credible” and determined that it was likely that some of Dr. Archibald’s behavior towards his patients was

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<sup>7</sup> Statement regarding Dr. Reginald Archibald from the Rockefeller University Hospital (October 5, 2018), attached as Exhibit 4.

<sup>8</sup> *Id.*



“inappropriate.”<sup>9</sup>

91. According to Respondent Rockefeller’s October 5<sup>th</sup> Statement:

Earlier this year [in 2018], another former patient of Dr. Archibald’s, who had not been identified in the 2004 investigation, came forward to make a similar report. In response, the University again reported the matter to appropriate state and federal authorities and re-engaged [Respondent] Debevoise to investigate further...Based on its investigation, [Respondent Debevoise] concluded that some of Dr. Archibald’s behaviors involving these patients were inappropriate. A policy relating to the further protection of pediatric patients was added to the Hospital’s then-existing safeguards and processes designed to protect patients.<sup>10</sup>

92. However, Respondent Rockefeller did not explain and has not publicly identified what the newly added 2004 policy was, or what, if any, were the previously existing “safeguards and processes designed to protect patients” and when they were put in place.

93. After Respondent Debevoise’s original 2004 investigation, Respondent Rockefeller believed that allegations of Dr. Archibald’s predatory sexual molestation of patients were “credible.” Respondent Rockefeller should have had reason to believe that Dr. Archibald’s conduct was widespread and potentially involved all of Dr. Archibald’s approximate 9,000 patients.

94. Another former patient of Dr. Archibald’s came forward in early 2018 and made a report that was similar to the report made in 2004. At that time, Respondent Rockefeller again engaged and retained Respondent Debevoise to investigate on its behalf.

95. Respondent Debevoise was, at all times during the 2004 and 2018 investigations, an agent of—and it remains an agent of Respondent Rockefeller. It acted—and continues to act—solely for Respondent Rockefeller’s benefit and was subject to Respondent Rockefeller’s control.

96. “[S]everal former patients [...] came forward” as a part of Respondent Debevoise’s

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

2018 investigation.<sup>11</sup> As it had in 2004, Respondent Debevoise again concluded that the reports were credible and that Archibald's conduct was "inappropriate."

97. As the 2004 investigation did, Respondent Debevoise's 2018 investigation gave Respondent Rockefeller significant reason to believe that Dr. Archibald's sexual abuse of young patients was widespread throughout his career and consistent with respect to his victims.

**C. Respondent Rockefeller's Letter to Petitioners and Former Patients of Dr. Archibald**

98. In the Fall of 2018, Respondent Rockefeller began sending letters to former patients of Dr. Archibald, reaching out individually to Petitioners on September 26, 2018.

99. Helen Cantwell, who is mentioned in the aforementioned September Rockefeller letter, is an attorney at Respondent Debevoise, which is a prominent international law firm. The September Rockefeller letter does not identify Ms. Cantwell as an attorney, nor does it identify Respondent Debevoise as a law firm.

100. The September Rockefeller letter does not indicate what use Respondent Rockefeller will make of the "information" that its recipients might decide to "share regarding [their] interactions with Dr. Archibald."

101. The September Rockefeller Letter does not promise to preserve the confidentiality of any information former patients provide, nor does it indicate whether any information they provide will be segregated from future litigation materials, whether personal identifying information will be removed from their communications, or whether their communications may be used against them in future litigation.

102. The September Rockefeller letter does not advise the recipient to retain legal counsel, notwithstanding the fact that Respondents Rockefeller and Debevoise knew the recipients

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<sup>11</sup> *Id.*

may have viable, legal claims and remedies against Respondent Rockefeller based upon the confidential information Debevoise sought from the recipient, and that Debevoise's investigation was designed to defeat and/or compromise same.

103. To the contrary, anyone who received the letter (and as a result took steps to identify Helen Cantwell or Respondent Debevoise) could have easily seen that she was an attorney and it was a law firm, and would have likely believed that an attorney-client relationship existed between the recipient and Ms. Cantwell or her firm, despite the fact that no such relationship existed.

104. Communications with possible victims of sexual abuse in high-profile investigations should take pains to preserve witness and victim confidentiality and ensure that such disclosures prevent the re-traumatization of victims.

105. At the time Respondent Rockefeller mailed the letter to former patients of Dr. Archibald, New York's statute of limitations barred claims of any former patients. Upon information and belief, at the time it sent the letters, Respondent Rockefeller was aware that New York's statute of limitations barred any claims for sexual abuse against Respondent Rockefeller.

106. Upon information and belief, Respondent Rockefeller was aware that a substantial portion of the public was aware of the existence of various statute of limitations and that a substantial portion of the public—including Dr. Archibald's victims—would believe that abuse that occurred decades ago would be time barred.

107. At the time Respondent Rockefeller mailed its correspondence, it knew from publicly available news reports that the New York Legislature would likely take up for consideration, and likely pass the Child Victims Act during its upcoming 2019 legislative session. This became more evident after the 2018 New York state legislative and gubernatorial

elections.

108. Previous versions of the Child Victims Act from the 2018 session provided for a one-year window in which any petitioner could file a lawsuit for claims of sexual abuse, irrespective of any other statute of limitations or whether the claims were previously barred

109. Respondents Rockefeller and Debevoise were aware that it was likely that any version of the Child Victims Act ultimately passed would include such a provision. In addition, even if the look-back provision was stripped from the statute, Respondents Rockefeller and Debevoise were aware that claims for many individuals under a certain age would remain under the new legislation.

110. Because of its previous investigations, Respondents Rockefeller and Debevoise were aware that there was a substantial likelihood that sending the letters to survivors of child sexual abuse would result in the gathering of information about the sexual abuse of Dr. Archibald which supported potential petitioners' claims against Respondent Rockefeller in advance of any litigation

111. Despite its awareness that it was sending its letter to Petitioners and other victims and that its letter would likely cause a significant number of recipients significant distress, Respondents Rockefeller and Debevoise sent the letters anyway.

112. Neither Respondents Rockefeller nor Debevoise have given any indication either in the letter, or in subsequent public updates on Respondent Rockefeller's website, that it was or is actively preserving any and all relevant electronic and physical patient files; medical records; journals; laboratory tests and results; research; notes; photographs; internal investigative memoranda; law enforcement or regulatory agency reports; investigations—public or private, and complaints concerning any alleged misconduct against Dr. Archibald and any memoranda

associated therewith; employee interviews and summaries; as well as all other relevant documents and data related to Dr. Archibald's employment at Respondent Rockefeller.

113. Respondent Rockefeller's September Letter did not comply with national best practices for investigating pervasive sexual abuse, especially pervasive childhood sexual abuse.

114. Petitioners, as victims of Dr. Archibald's sexual abuse, were reminded of the abuse they suffered, and therefore were re-traumatized by the September Rockefeller Letter.

115. Upon information and belief, many of Dr. Archibald's former patients who received the letter and were similarly molested as Petitioners were, learned of the possibility of other victims for the first time in the September Rockefeller Letter.

116. Additionally, Respondent Rockefeller did not "obtain an authorization for any use or disclosure of protected health information for marketing," and the September Rockefeller Letter was not "a face-to-face communication or a promotional gift of nominal value." *See* 45 C.F.R. § 164.508(3)(i).

117. The September Rockefeller Letter was not sent pursuant to any current medical evaluation, diagnosis or treatment sought by its recipients.

118. "Marketing" under the HIPAA Privacy Rule is defined as the making of "a communication about a product or service that encourages recipients of the communication to purchase or use the product or service." 45 C.F.R. § 164.501.

119. The September Rockefeller Letter was a communication about a service, namely Respondent Debevoise's investigation, which encouraged the letter's recipients to use the law firm's services.

120. By sending the letters, Respondents Rockefeller and Debevoise manipulated less informed, less sophisticated and unrepresented survivors by having them contact a large and

prominent law firm to participate in a self-serving investigation ultimately designed to compromise and defeat the potential legal claims of the victims.

121. Dr. Archibald died in 2007. Respondent Rockefeller's investigation started in the mid 1990's, and the institution is now only "investigating" to minimize its legal liability and to assert control and influence over Petitioners and other survivors.

122. But for the then anticipated, and now passed change in the law, Respondents Rockefeller and Debevoise would never have given anyone notice of Dr. Archibald's predatory sexual abuse of his patients, notwithstanding their knowledge of Dr. Archibald's heinous exploitation of his victims and of the University's prestige and power.

**D. Petitioner Mark Wagner's Allegations**

123. Petitioner Mark Wagner ("Mark") was diagnosed with *Alopecia* at the age of eight years old.

124. Seeking expert opinion and care, Mark's mother took him to see Dr. Archibald at Rockefeller University Hospital.

125. Mark was subjected to "physical exams" in which he Dr. Archibald touched, manipulated, and measured his genitals.

126. Dr. Archibald took nude and sexually explicit photographs of Mark.

127. Mark continued to see Dr. Archibald until 1972 and was abused at each visit.

**E. Petitioners John D. Wagner, Caroline Wagner, and Paul Wagner's Allegations**

128. After their brother became a patient of Dr. Archibald's, Dr. Archibald requested that John D. Wagner ("John D."), Caroline Wagner ("Caroline"), and Paul Wagner ("Paul") each come in for "examinations," so that Dr. Archibald could study commonalities of siblings of patients with diseases like Mark's.

129. John D., was similarly subjected to physical examination in which he was sexually abused by Dr. Archibald.

130. John D. was photographed in the nude.

131. Paul was similarly subjected to “physical exams” in which he was sexually abused by Dr. Archibald.

132. Paul was photographed in the nude.

133. Caroline was inappropriately examined by Dr. Archibald.

134. Caroline was photographed in the nude.

**F. Common Allegations Across all Petitioners**

135. Upon Petitioners’ information and belief, Respondent Rockefeller is in possession of the nude and pornographic photographs of Dr. Archibald’s victims.

136. Upon Petitioners’ information and belief, Respondent Debevoise is in possession of the nude and pornographic photographs of Dr. Archibald’s victims.

137. Upon Petitioners’ information and belief, Respondent MSBC is in possession of the nude and pornographic photographs of Dr. Archibald’s victims.

138. Upon Petitioners’ information and belief, Respondent JHU is in possession of the nude and pornographic photographs of Dr. Archibald’s victims.

139. Upon Petitioners’ information and belief, Respondent Indiana University is in possession of the nude and pornographic photographs of Dr. Archibald’s victims.

140. Upon Petitioners’ information and belief, Respondent Kinsey Institute is in possession of the nude and pornographic photographs of Dr. Archibald’s victims.

141. Upon Petitioners’ information and belief, Respondent Ruth Archibald is in possession of the nude and pornographic photographs of Dr. Archibald’s victims.

142. Upon Petitioners' information and belief, Respondent Lawrence Archibald is in possession of the nude and pornographic photographs of Dr. Archibald's victims.

143. Upon Petitioners' information and belief, Respondent Evelyn Archibald is in possession of the nude and pornographic photographs of Dr. Archibald's victims.

144. Upon Petitioners information and belief, Respondent Estate of Reginald Archibald is in possession of the nude and pornographic photographs of Dr. Archibald's victims.

145. Upon Petitioners' information and belief, the nude and pornographic photographs are not currently contained in Petitioners' medical records as well as Respondent Rockefeller patient files that patients can request from Respondent Rockefeller. If they were contained in patient files at one time, then Respondent Rockefeller had contemporaneous access to those photographs.

146. Respondent Rockefeller still has access to produce the original patient files considering many were created in the late 1940's and early 1950's.<sup>12</sup>

147. Upon Petitioners' information and belief, at least two articles published by Dr. Archibald contain pictures of naked boys in the common stance of palms out, as described by Petitioners and many of his victims.

148. All of Dr. Archibald's acts were conducted under the pretext of providing legitimate medical care at Respondent Rockefeller.

149. Dr. Archibald used his position of trust and confidence in an abusive manner causing Petitioners to suffer a variety of injuries including but not limited to shock, humiliation, emotional distress and related physical manifestations thereof, embarrassment, loss of self-

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<sup>12</sup> Respondent Rockefeller has acknowledged that "[f]astidiously maintaining" the "vital data" of its patients "is the responsibility" of Respondent Rockefeller. In this regard, Respondent Rockefeller has boasted that it "has every medical record on every patient ever seen at the hospital, saved on microfiche, microfilm, or in original hard copy." The Rockefeller University Hospital, Update Fall 2004, *available at* [https://www.rucares.org/assets/file/newsletter\\_archive/newsletterfall2004.1097785566.1129312828.pdf](https://www.rucares.org/assets/file/newsletter_archive/newsletterfall2004.1097785566.1129312828.pdf).



esteem, disgrace, loss of enjoyment of life and negative impacts on his life.

150. Despite complaints to Respondent Rockefeller's representatives, victims' concerns and allegations went unaddressed in violation of reporting policies and procedures and in a manner that was reckless and deliberately indifferent.

151. Prior to their receipt of the September Rockefeller letter, Petitioners had no contact with Respondent Rockefeller since about 1972.

152. The September Rockefeller Letter immediately brought back Petitioners' traumatic sexual abuse experiences at the hands of Dr. Archibald to the forefront of his mind. It has forced Petitioners to relive the abuse over, and over again.

### **CAUSES OF ACTION<sup>13</sup>**

#### **COUNT I**

#### **Pre-action Discovery under C.P.L.R. § 3102(c)** **(Against All Respondents)**

153. Petitioners re-allege and incorporate by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

154. Dr. Archibald's sexual abuse of Petitioners occurred between 1967 and 1972.

155. Upon information and belief, Dr. Archibald's sexual abuse of thousands of other victims dates back to the 1940s.

156. Dr. Archibald has been dead since 2007.

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<sup>13</sup> Petitioners are currently between the age of 59 and 63 years of age and believe that the unambiguous language of section 2 of the Child Victims Act permits them to bring individualized claims, immediately. However, Petitioners acknowledges that Section 3 of the Child Victims Act "revive[s]" claims that were "barred as of the effective date of this section." While Petitioners do not expect Respondents to seek dismissal of any claims made timely by virtue of the Child Victims Act, they have chosen to wait six months from the date on which the Child Victims Act is signed into law to bring individualized claims against the Respondent Rockefeller and the Estate of Reginald Archibald, by way of amendment, for: (1) Sexual Abuse; (2) Assault; (3) Battery; (4) Fraud; (5) False Imprisonment; (6) Medical Malpractice; (7) Negligent Hiring, (8) Supervision and Retention; (8) Vicarious Liability; (9) Gross Negligence; and (10) Punitive Damages.

157. Upon information and belief, other witnesses that are material to Petitioners' prosecution of their claims have become or are in significant danger of becoming unavailable.

158. Upon information and belief, the identity of these witnesses is in the exclusive custody and control of Respondents.

159. Petitioners intend to assert claims in this Court within the time provided by the Child Victims Act concerning the sexual assault described herein, including: (1) Sexual Abuse; (2) Assault; (3) Battery; (4) Fraud; (5) False Imprisonment; (6) Medical Malpractice; (7) Negligent Hiring, (8) Negligent Supervision and Retention; (8) Vicarious Liability; (9) Gross Negligence; and (10) Punitive Damages.

160. Among other information, Petitioners require the names and last-known addresses of relevant fact witnesses, along with relevant documentation, sufficiently in advance of the expiration of the six-month waiting period under the Child Victims Act to conduct their investigation and adequately frame their forthcoming complaint (*e.g.*, name all of the appropriate parties as respondents).

161. Petitioners also require that information to seek depositions of surviving fact witnesses as soon as possible and to ensure that additional fact witnesses do not become unavailable.

162. Pre-action discovery is particularly appropriate in this proceeding because the Child Victims Act only provides for a one-year renewed statute of limitations period.

163. Thus, Petitioners are entitled to pre-action discovery to aid in the prosecution of their forthcoming claims, frame their pleadings, ensure compliance with the short statute of limitations period, and to preserve information.

164. Petitioners thus seek an order under C.P.L.R. § 3102(c), compelling pre-action

discovery by Respondents of: (a) the identity or identities, including but not limited to the name, address, telephone number, and email, of all patients treated by Dr. Reginald Archibald at Rockefeller, MSBC and JHU, (b) the identity or identities, including but not limited to the name, address, telephone number, and email, of all supervisors, subordinates and co-workers of Dr. Archibald at Rockefeller, MSBC, Indiana University, Kinsey Institute, and JHU, (c) all relevant documents in their custody, possession, or control—in both physical and electronic formats, including but not limited to patient files, medical records, journals, laboratory tests and results, research, notes, photographs, internal investigative memoranda, law enforcement or regulatory agency reports, investigations (public or private), complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith, employee interviews and summaries, as well as all other relevant documents and data ((a), (b) and (c) collectively referred to as the “Information”).

**COUNT II**  
**Related Injunctive Relief**  
**(Against All Respondents)**

165. Petitioners re-allege and incorporate by reference the allegations contained in all prior paragraphs as if fully stated in this Count.

166. Petitioners request the Court use its inherent equitable powers to order all Respondents to preserve and log all relevant documents in their custody, possession, or control—in both physical and electronic formats, including but not limited to patient files, medical records, journals, laboratory tests and results, research, notes, photographs, internal investigative memoranda, law enforcement or regulatory agency reports, investigations (public or private), complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith, employee interviews and summaries, as well as all other relevant

documents and data.

167. Upon Petitioners' information and belief, Respondent Rockefeller is still in possession of said documents and records by virtue of its relationship of employing Dr. Archibald and its self-professed policy of maintaining "...every medical record on every patient ever seen at the hospital...."

168. Upon Petitioners' information and belief, Respondent Debevoise is still in possession of said documents and records by virtue of its relationship of investigating Dr. Archibald on behalf of Respondent Rockefeller.

169. Upon Petitioners' information and belief, Respondent MSBC is still in possession of said documents and records by virtue of its relationship of acting as a referral agency sending prospective patients to Respondent Rockefeller and Dr. Archibald.

170. Upon Petitioners' information and belief, Respondent JHU is still in possession of said documents and records by virtue of its relationship of employing Dr. Archibald.

171. Upon Petitioners' information and belief, Respondent Indiana University is still in possession of said documents and records by virtue of its relationship with the Kinsey Institute and its mutual connection with Dr. Archibald to the Rockefeller Foundation.

172. Upon Petitioners' information and belief, Respondent Kinsey Institute is still in possession of said documents and records by virtue of its mutual connection with Dr. Archibald to the Rockefeller foundation.

173. Upon Petitioners' information and belief, Respondent Ruth Archibald is still in possession of said documents, records, personal effects, and property, by virtue of her relationship as the daughter of Dr. Archibald.

174. Upon Petitioners' information and belief, Respondent Lawrence Archibald is still

in possession of said documents, records, personal effects, and property, by virtue of his relationship as the son of Dr. Archibald.

175. Upon Petitioners' information and belief, Respondent Evelyn Archibald is still in possession of said documents, records, personal effects, and property, by virtue of her relationship both as the wife of Dr. Archibald and as the Personal Representative of his Estate.

176. Upon Petitioners' information and belief, Respondent Estate of Reginald Archibald is still in possession of said documents, records, personal effects, and property, by virtue of its relationship as the legal custodian and resting place for all relevant records constituting the decedent—Dr. Archibald's Estate.

177. Petitioners further request the Court use its inherent equitable powers to use such an independent Court Appointed Master to oversee such document preservation and logging compliance.

178. Petitioners further request the Court use its inherent equitable powers to order a report on document preservation from all Respondents concerning all relevant documents in their custody, possession, or control—in both physical and electronic formats, including but not limited to patient files, medical records, journals, laboratory tests and results, research, notes, photographs, internal investigative memoranda, law enforcement or regulatory agency reports, investigations (public or private), complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith, employee interviews and summaries, as well as all other relevant documents and data.

#### **RELIEF REQUESTED**

WHEREFORE, Petitioners request that judgment be entered against Respondents, ordering:

- A. Respondents to produce the Information to Petitioners under C.P.L.R. § 3102(c);
- B. Respondents to preserve and log all relevant documents in their custody, possession, or control—in both physical and electronic formats, including but not limited to patient files, medical records, journals, laboratory tests and results, research, notes, photographs, internal investigative memoranda, law enforcement or regulatory agency reports, investigations (public or private), complaints concerning any alleged misconduct against Dr. Archibald and any memoranda associated therewith, employee interviews and summaries, as well as all other relevant documents and data;
- C. An independent Master be appointed to oversee and ensure compliance with the preservation of the aforementioned documents and records;
- D. Respondents to prepare a report on the preservation and logging of the aforementioned documents and records;
- E. Respondents pay Petitioners' reasonable costs and attorneys' fees; and
- F. All other relief the Court deems just, necessary and equitable.

Dated: New York, New York  
April 25, 2019

**LAW OFFICES OF G. OLIVER  
KOPPEL & ASSOCIATES**

By: 

G. Oliver Koppell

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D. Wagner, Paul Wagner and Caroline  
Wagner*

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**ATTORNEY VERIFICATION**

G. Oliver Koppell, Esq., an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following:

1. I am counsel for Plaintiffs, Mark Wagner, John D. Wagner, Paul Wagner and Caroline Wagner, in the within proceeding.
2. I have read the foregoing Petition and know the contents thereof and the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.
3. The reason I am making this verification instead of Plaintiffs is that Plaintiffs reside outside the County of New York where I maintain my offices.

Dated: New York, NY  
April 25, 2019

  
G. Oliver Koppell, Esq.